

The complaint

Mrs C complains that Mitsubishi HC Capital UK Plc (trading as “Novuna”) are unfairly holding her liable for two loans totalling £40,000 that she says she didn’t take out.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here. In brief summary, Mrs C fell victim to an investment scam in April 2022 after she was contacted by a scam investment broker (“F”) who encouraged her to invest in cryptocurrency.

As part of the scam, Mrs C said that F took out several loans in her name, without her knowledge or consent, including two loans with Novuna for £25,000 taken out on 29 April 2022 and a further loan of £15,000 taken out on 3 May 2022. These funds were paid into Mrs C’s bank account, where they were then transferred on to the scammer via her cryptocurrency wallet.

After realising she’d been scammed, Mrs C reported the fraud to her bank and to Novuna, as she said she didn’t consent to or know about the loans, such that it shouldn’t hold her liable for them. She also said that the loans were unaffordable.

Novuna wasn’t persuaded Mrs C had been a victim of fraud as it thought she was likely aware of the loans and had knowingly moved the funds from her personal account to her crypto wallet. It also said that it didn’t consider the first loan for £25,000 was unaffordable based on the credit checks it carried out. However, Novuna acknowledged that it didn’t make the right decision when it granted the *second* loan of £15,000 soon after. So, it offered to remove all interest from the second loan as well as any negative information applied to her credit file. But it said Mrs C would still need to repay the capital of both loans as she’d utilised the funds. Unhappy with this, Mrs C referred the matter to our service.

Our investigator didn’t uphold the complaint. She was satisfied Mrs C would’ve likely known that the loans had been taken out on her behalf, and that she would’ve known she was paying the loan proceeds to the scammer from her bank account, so she thought it was fair for Novuna to hold her liable for the loans. In terms of the second loan, the investigator thought that Novuna’s offer to remove the interest and adverse credit reporting was fair, but she didn’t think it was reasonable for it to expect Mrs C to repay the £15,000 in full before waiving the interest. Novuna subsequently agreed that it wouldn’t insist on the full amount being repaid before removing the interest and would work with Mrs C to establish and affordable repayment plan.

Mrs C still didn’t think this was fair as she wants both loans written off entirely. As she didn’t agree, the matter has been escalated to me to determine.

What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and

reasonable in the circumstances of this complaint.

Having done so, I agree with the conclusions reached by the investigator as I'm satisfied it's fair and reasonable for Novuna to hold Mrs C liable to repay the loans. I'll explain why.

Section 83 of the Consumer Credit Act (CCA) 1974 sets out that a person won't be held liable for a debt if it was taken out by another person who wasn't acting as their agent. So, I've considered the extent to which Mrs C was involved in the loan application with Novuna, and whether she ought reasonably to have known that she had received the proceeds of the loans into her account.

I accept it's possible that Mrs C didn't complete the loan applications herself, and that they were likely to have been completed by the scammer using information already obtained from Mrs C. But that doesn't mean she cannot fairly or reasonably be held liable to repay the loans if she knew that finance was being taken out on her behalf, and if she knowingly received and used the funds of those loans.

Mrs C has acknowledged that she was aware of credits being paid into her account from Novuna. But she's told our service that she was led to believe this was F's money, which it had paid into her bank account in order to demonstrate that she would receive returns on her investment, which she had to pay back to the scammer via cryptocurrency. She has maintained that she wasn't aware the money was from the proceeds of a loan.

However, the evidence I've seen suggests that Mrs C was well aware that loans were being taken out in her name and being paid into her account. Mrs C's bank ("Firm A") has provided a call recording of a conversation it had with her at the time of the scam about the payment activity on her account. Firm A enquired about the large credits being paid into Mrs C's account and asked if they were loans. Mrs C confirmed that they were, and that she had taken them out for home improvements.

Firm A was concerned as it could see Mrs C was also sending money to cryptocurrency exchange platforms. It said it wanted to make sure she wasn't taking out loans to buy cryptocurrency, to which she assured the bank that she wasn't. Firm A also asked Mrs C whether she could afford to repay the loans, to which she confirmed that she could.

I can see from the correspondence sent between Mrs C and the scammer that she also said that she didn't want any more loans being taken out in her name, and even said she was going to check her credit score. Novuna said it had also sent Mrs C information about the loan via text message. She says the scammers told her that it was all part of their company and that it was standard procedure for messages to come out. But this wouldn't have just been promotional material about borrowing, it would've been specific information about Mrs C and the finance that had been applied for in her name.

So, in light of this evidence, I don't consider Mrs C's testimony regarding her awareness of the loans to be plausible, as it's clear she was fully aware that loans had been taken out in her name and paid into her account – including the loans from Novuna – which she then transferred on to the scammer. She ought reasonably to have known that she would need to pay this money back after it had been paid into her account. And she didn't at any point contact Novuna before paying the money to the scammer to say she didn't apply for or want the loans.

Mrs C says she shouldn't be held liable for the loan as she didn't consent to them being taken out on her behalf. As I've explained above, the evidence suggests to me that Mrs C was aware and likely consented to the loans being taken out on her behalf by the scammer. But even if she didn't consent to it, given she ought reasonably to have been aware that the

money she was transferring was part of a loan that had been paid into her account, I don't consider it would be fair and reasonable to ask Novuna to write off the debt in any event as she has knowingly used the funds they've lent her.

Were the loans affordable?

Mrs C submits that Novuna should've never granted the loans in the first place as it should've been apparent that she could not afford to repay them.

In terms of the first loan for £25,000, Novuna has explained that it assessed Mrs C's affordability based on her credit report using data such as her income and expenditure, existing credit commitments, her debt repayment history and whether she had any adverse credit markers. A risk score was created for Mrs C which passed Novuna's minimum lending criteria, and it demonstrated that she would be left with enough disposable income to comfortably afford the repayments. There was nothing from Mrs C's credit report that would indicate she wouldn't be able to sustainably repay the loan.

I appreciate Mrs C had also taken out two loans with other providers around the same time, but these wouldn't have been likely been visible to Novuna on her credit file given how recently they'd been taken out.

I'm therefore satisfied that Novuna carried out reasonable and proportionate checks for the £25,000 loan to conclude, based on the information gathered, that it was affordable, such that it's fair and reasonable for Novuna to hold Mrs C liable to repay it.

In terms of the £15,000 loan, Novuna has acknowledged that it didn't lend this money responsibly given it was applied for just a few days after Mrs C had already taken out a £25,000 loan. And given the circumstances, I agree that it shouldn't have readily lent this money to Mrs C. But that doesn't mean she has no liability to pay off the debt if she's since utilised the funds, which she did when they were paid into her account and she transferred it to the scammer via cryptocurrency.

In light of its error, Novuna has offered to waive any interest applied to the £15,000 loan, as well as removing any negative information reported to Mrs C's credit file. But it will still be holding her liable to repay the loan capital. And overall, given Mrs C received the funds and used the proceeds to purchase cryptocurrency, I'm satisfied its offer represents a fair and reasonable compromise for its irresponsible decision to lend the money, and Mrs C disposing of the loan rather than paying it back to Novuna.

Novuna also offered to pay Mrs C 8% simple interest per year on any payments she has made towards the interest on the £15,000 loan. It isn't clear if Mrs C has yet made any repayments, but I'm satisfied this is also fair and in line with the approach our service takes to such awards.

I note that Novuna also offered Mrs C £200 compensation for the time it took to complete its investigation into her complaint. I appreciate these delays would have been frustrating, particularly at such a worrying time after discovering she had been scammed. But overall, I'm satisfied Novuna's offer is fair compensation for the distress and inconvenience likely suffered.

As a result, I don't consider there is anything further Novuna needs to do to put things right in these circumstances, over and above what it has already offered to do in its final response. If Mrs C is now willing to accept its offer, she should let our service know.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 5 March 2024.

Jack Ferris
Ombudsman